

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No. 3957 of 2011 (O&M)

Date of decision: 24.08.2015

Smt.Dhanpati and others

..... Appellants

versus

Budh Ram and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Arun Jain, Senior Advocate with
Mr.K.S.Sidhu, Advocate for the appellants
Mr.Samarvir Singh, DAG Haryana

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Challenged in the present regular second appeal is the judgment and decree dated 19.9.2011, passed by the learned Additional District Judge, Faridabad, dismissing the suit of the plaintiffs by reversing the judgment and decree dated 15.5.2010, passed by the learned Civil Judge, Senior Division, Faridabad.

Brief facts of the case are that the plaintiff No.1 Dhanpati is the wife of Budh Ram – defendant No.1, whereas plaintiff Nos.2 to 5 are the daughters and sons of Budh Ram. It was claimed by the plaintiffs that suit property was previously owned by Munsli and

Mohan, both sons of late Yadram. During his lifetime, Mohan relinquished his right in the suit property in favour of his sons Budh Ram, Jaivir and Jagram. Therefore, the suit property in the hand of defendant No.1 Budh Ram is ancestral in nature. It was also claimed that under the amended provisions of Section 6 of the Hindu Succession Act, daughter is also given the status of coparcener. Plaintiff No.1 being the wife and plaintiff Nos.2 to 5 being the daughters and sons are the coparceners in the suit property. It is pleaded that plaintiffs have been turned out of the residential house by defendant No.1 and they are living with their grandmother at village Balua, Tehsil Sohna, District Gurgaon. Defendant No.1 is alleged to be a man of bad habits and is addicted to drinking, gambling, womanizing etc. and wasting money after alienating the ancestral property for self enjoyment. The suit property has been acquired by the defendant No.2 -HUDA vide Award No.3 dated 30.4.1998 for the development and utilization of land for Transport Communication and Commercial, Residential and Institutional use in Sector 61, Faridabad. A compensation to the tune of Rs.8,13,079.85 was paid to defendant No.1 by defendant No.2. Major part of the awarded amount has already been spent by defendant No.1 without legal necessity and to satisfy his lust of bad habits. A reference petition under Section 18 of the Land Acquisition Act, 1894 is pending. If defendant No.1 succeeds in withdrawing the enhanced amount, the plaintiffs will suffer irreparable loss. Therefore, relief of decree for declaration was sought to the effect that the plaintiffs are lawful share holders and coparceners and defendant No.1 has no

right to alienate the suit property or to receive the compensation amount beyond his 1/6th share.

The suit was contested by defendant No.1 Budh Ram, who denied that plaintiff Nos.2 to 5 are the coparceners in suit property or that they have got any share in the disputed property. The right of the plaintiff to receive share in the compensation of the acquired land was also denied. It was pleaded that on the receipt of compensation, he had purchased the property measuring 132 square yards vide sale deed dated 22.6.1999 in his name for Rs.four lac. He has also returned the bank loan of Rs.1,80,000/- and also purchased a tractor for the welfare and benefit of his family, especially, minor plaintiffs. It was denied that he has spent the amount on his bad habits. From the pleadings, following issues were framed:-

- 1. Whether the plaintiff is entitled to the declaration to the effect that plaintiffs are lawful share holders as coparceners of the suit property? OPP*
- 1a. If issue No.1 is proved, what is the share of parties in the suit property? OPP*
- 2. Whether the plaintiffs are entitled for injunction, as prayed for? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have not approached the court with clean hands? OPD*
- 5. Whether the suit property is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 6. Relief.*

The trial Court decided issue No.1 and 1(a) in favour of the plaintiffs. Issue No.2 was also decided in favour of the plaintiffs.

Issue Nos.4 and 5 were not pressed and consequently, the decree for declaration to the effect was granted that the plaintiffs are coparceners / shareholders in the property, detailed in the plaint and are entitled to receive compensation to the extent of their share from defendant No.2-HUDA. Permanent injunction was also granted, restraining the defendant No.2 from disbursing the entire compensation to defendant No.1.

Dissatisfied with the said judgment and decree, defendant No.1 preferred an appeal in which the findings were reversed and the suit was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the file.

The substantial question of law arises in this case is as to 'whether the findings recorded by the learned Additional District Judge are perverted and contrary to the record?'

The perusal of the trial Court file shows that admittedly, Budh Ram defendant No.1 had received the suit property from his father through judgment and decree dated 19.5.1981 (Ex.P5 & Ex.P6) in the suit titled *Budha etc. v. Mohan*. In the said suit, it was claimed that suit property is joint Hindu property. Defendant also admitted in cross-examination as DW1 that suit property is ancestral property and his father partitioned the property vide civil Court decree.

I am of the view that suit property qua Budh Ram was ancestral and this fact is admitted by him but at the same time, he claimed that his father had partitioned suit property through civil

Court decree. Admittedly, in this case, Budh Ram had received property through Civil Court judgment and decree dated 19.5.1981 (Ex.P5 and Ex.P6). Therefore, once the property is received through any other mode, except through succession, it loses its character of being ancestral. Father of Budh Ram had transferred the property during his lifetime to Budh Ram and his two brothers. Meaning thereby that it was self acquired property in their hands as even during the lifetime of their father, thus, Budh Ram could alienate the same. It being so, when the suit property is acquired by the act of the government, it is an acquisition by operation of law. At the first instance, since it is self acquired property, the plaintiffs, the sons and daughters of Budh Ram, even if acting as coparceners under Section 6 of the amended Act of the Hindu Succession Act, do not have any right in the same. Therefore, they could not claim any share in the compensation, awarded by Land Acquisition Collector or the enhanced compensation, which may be awarded by the Court.

Assuming it for the sake of arguments that suit property is proved to be ancestral in nature, even then the plaintiffs have got no right to claim share in the compensation awarded by the Land Acquisition Collector or the Court regarding the land compulsorily acquired by the State/ authorities. Even if, the suit property had been ancestral, Budh Ram being the *Karta* of the family was to manage the property and therefore, it was for him as to decide to how the funds of the acquired property are to be utilized. Defendant has already led evidence to show that he has purchased one plot and also purchased the property in the name of minors plaintiff No. 2 to 5,

returned the bank loan and purchased a tractor out of the compensation received by him. In any case, even if the plaintiffs had been held to be coparceners, allowing them to claim their share of compensation from the Land Acquisition Collector or the enhanced compensation from the Court, would mean that they are claiming partition during the lifetime of the *Karta*, which cannot be allowed as the coparcener cannot claim partition during the lifetime of a *Karta*. In any case, it is proved that land had lost its ancestral character. Therefore, the appellate Court rightly held that suit property is not ancestral property.

Consequently, I find that there is no illegality or perversity in the findings recorded by the learned Additional District Judge, Faridabad. Judgment is passed in accordance with the established principles of law.

Accordingly, the appeal is found to be without any merits and is dismissed.

In view of disposal of the appeal, all applications pending also stand disposed of.

24.08.2015
gk

(Kuldip Singh)
Judge